

VZCZCXRO6970  
PP RUEHIK  
DE RUEHTA #1915/01 2950911  
ZNR UUUUU ZZH  
P 220911Z OCT 09  
FM AMEMBASSY ASTANA  
TO RUEHC/SECSTATE WASHDC PRIORITY 6696  
INFO RUCNCIS/CIS COLLECTIVE 2075  
RUCNCLS/ALL SOUTH AND CENTRAL ASIA COLLECTIVE  
RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RUEHBJ/AMEMBASSY BEIJING 1446  
RUEHKO/AMEMBASSY TOKYO 2146  
RUEHUL/AMEMBASSY SEOUL 1081  
RUEAIIA/CIA WASHDC  
RHEFAAA/DIA WASHDC  
RHEHNSC/NSC WASHDC 1635  
RUEKJCS/SECDEF WASHDC 1495  
RUEKJCS/JOINT STAFF WASHDC  
RHMFIUU/CDR USCENTCOM MACDILL AFB FL  
RUEHAST/USOFFICE ALMATY 1954  
RUEAWJL/DEPT OF JUSTICE WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHINGTON DC  
RUCPDOG/DEPT OF COMMERCE WASHINGTON DC  
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RUEABND/DEA HQS WASHINGTON DC  
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC 0032  
RUEANQT/FINCEN VIENNA VA

UNCLAS SECTION 01 OF 04 ASTANA 001915

SENSITIVE  
SIPDIS

STATE FOR INL/AEE, SCA/CEN

E.O. 12958: N/A

TAGS: [PGOV](#) [PINR](#) [SOCI](#) [KCRM](#) [KCOR](#) [KZ](#)

SUBJECT: KAZAKHSTAN: SIX MONTHS AFTER THE ANTI-CORRUPTION DECREE

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REFTEL: ASTANA 1773

11. (U) Sensitive but unclassified. Not for public internet.

12. (SBU) SUMMARY: The anti-corruption decree signed by President Nazarbayev six months ago tasked the government with drafting legislation to improve anti-corruption measures. A series of high-profile corruption investigations may show the government's commitment to fighting corruption, but has also caused concerns in some quarters about law enforcement's ability to conduct effective investigations, while staying politically neutral and respectful of the rule of law. Nevertheless, Kazakhstan used the International Anti-Corruption Conference in Astana September 16-18 as a platform to declare its commitment to fighting corruption. END SUMMARY.

#### PRESIDENTIAL ANTI-CORRUPTION DECREE

13. (SBU) President Nazarbayev issued a decree on April 22 directing the government to pursue a broad range of anti-corruption measures. The decree is meant to give both government officials and those working for state-controlled companies personal responsibility for preventing corruption. The decree also foresees disciplinary action against those who do not report corruption. The decree also directs the government to encourage citizens to report corruption.

14. (SBU) As part of corruption-prevention measures, officials will be required to report their property holdings while employed by the government and for a period following their service if the value of the property exceeds their official income. Law-enforcement agencies will conduct undercover operations within ministries to root out corruption at all levels. All government agencies will have to maintain databases of personal and professional information on all employees, including any investigations and disciplinary actions. In an effort to curb corporate corruption, government agencies will be required to identify positions with a high corruption risk and to develop special applicant requirements.

15. (U) One of the most important aspects of the decree is an initial attempt to eliminate conflicts of interests within the government. Kazakhstani law previously had no prohibition on conflicts of interest, and government procurement procedures had no built-in protections. The decree establishes a period of time that government officials cannot work for commercial companies over which their ministries or agencies had oversight. The Presidential Commission on Corruption must now analyze and monitor corruption, as well as develop anti-corruption measures. Legislation to implement the decree remains in draft at the Ministry of Justice.

16. (U) This decree is not the only anti-corruption initiative. A working group in the Parliament is studying legislation drafted by the Financial Police to increase its ability to fight corruption. The legislation would require confiscation of property -- in addition to imprisonment -- of government officials convicted of embezzlement, operation of shell companies, or other abuses of power. The legislation would also add fraud committed by state officials to the list of corrupt practices due to corrupt officials' claims in some cases that they committed fraud when accepting bribes, because they could not deliver on promises made in exchange for the bribe. The legislation will also provide criminal liability for legal entities.

17. (U) Furthermore, the decree addresses the need to strengthen anti-corruption measures within law enforcement. Unified selection criteria for law-enforcement job applicants will be developed similar to the eligibility requirements for other government positions. Newly hired officers will be required to serve a probationary period. In recognition of the need for higher salaries to prevent law enforcement corruption, officers will receive raises across the board.

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18. (U) The Financial Police will have concurrent jurisdiction with the Committee for National Security (KNB) for corruption and abuse of power cases against political appointees. However, the Financial Police will have sole jurisdiction in all cases against other governmental employees.

#### RESPONSES TO THE DECREE

19. (U) Soon after the decree, the Prosecutor General's Office (PGO) chaired a Coordination Council meeting of all law-enforcement agencies. Participants decided to create a Secretariat with a representative from each law-enforcement agency and to ensure that the Coordination Council takes an active role in coordinating high-profile corruption investigations. The PGO announced that the decree not only addresses the current problems of frequent corruption cases, but also will allow for a systematic approach to combat corruption. The PGO also stressed the need for civil society, the government, and mass media to unite in their efforts. Additionally, the PGO stated that it is increasing its role in protecting the rights of citizens by reviewing all recent court decisions to ensure fair treatment of defendants and appropriate sentencing.

110. (U) The Chairman of the Financial Police expressed his pleasure with the decree, highlighting the fact that his agency will now have more work. This development marks a sharp change from November 2008 when President Nazarbayev attacked the anti-corruption work of law enforcement and proposed the creation of a new anti-corruption force in a speech at a seminar. Despite the subsequent rumors about the future of the Financial Police, the expansion of its jurisdiction and the reported satisfaction of the President with the intensity of its recent anti-corruption efforts indicate that the Financial Police has little to worry about.

#### STATISTICS AND ONGOING CORRUPTION CASES

111. (SBU) During the first nine months of 2009, the Financial Police investigated 1,303 cases, which is a 4.8% increase over the same period last year. Of those investigations, 356 were bribery cases, a 39.5% increase (from 255 to 356). The Financial Police's

corruption investigations of high profile public officials include two Vice-Ministers and the Minister of Environmental Protection, two Deputy Chairmen of the Statistics Agency, the Chairman of the Water Resources Committee of the Ministry of Agriculture, and a Vice-Minister of Emergency Situations.

¶12. (SBU) At the opening of an INL-funded FBI training course at the Financial Police Academy on October 12 (septel), Deputy Chairman of the Financial Police Andrey Lukin shed light on the most recent corruption investigations. On October 2, Vice-Minister of Emergency Situations Ablai Sabdalın was arrested for conspiracy to provide a bribe. During the investigation, the Financial Police used video surveillance for three months and gained the cooperation of the Ministry's Director of the Technical and Material Support Department, who was asked by the Vice-Minister to pay the bribes on his behalf. The Director was placed in witness protection after the Vice-Minister's arrest.

¶13. (U) Anatoliy Ryabtsev, Chairman of the Ministry of Agriculture's Water Resources Committee, is currently on trial for abuse of power, embezzlement, and bribery. The investigation into Ryabtsev was jointly conducted by the Financial Police and KNB. Ryabtsev pled guilty to only some of the KNB charges and not guilty to the Financial Police charges. The Financial Police filed the bribery case after Ryabtsev attempted to pay officers \$40,000 to close an embezzlement investigation.

¶14. (U) On October 16, former Minister of Environmental Protection

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Nurlan Iskakov was sentenced to four years imprisonment for abuse of power. He was found not guilty on charges of leading an organized criminal group, which made it impossible to prove related charges against two Vice-Ministers. The Vice-Ministers were found guilty on charges of neglect of duty.

RESULTS, BUT AT WHAT COST?

¶15. (SBU) There has been, however, a public backlash against the Financial Police, who have been criticized for the poor quality of their investigations, use of weak evidence, and violations of legal procedures. When pressured to enhance their results early on, the Financial Police only increased their operational tempo, without improving investigative methods. In a recent high-profile case, the publisher of the opposition newspaper "Respublica" has accused the Financial Police of searching its offices and seizing property without a warrant during a libel case.

¶16. (SBU) The KNB has also been criticized for its actions in the arrest of Kazatomprom Director Mukhtar Djakishev. Djakishev's attorney and family have publicly accused the KNB of denying him his right to have an attorney and to communicate with his family. Independent mass media representatives have also complained of pressure from law-enforcement agencies, including the KNB.

¶17. (SBU) The passage of the anti-corruption decree also increased the competition among law-enforcement agencies and has led to the arrest of law-enforcement officers, such as the KNB's arrest of the Chief of the Financial Police of the North Kazakshtan Oblast for soliciting a \$120,000 bribe for not investigating a case. Other negative consequences from increased competition include a disagreement between Financial Police and traffic police officers that led to a brawl in a restroom at the Department of Interior. In order to resolve the issue, the Minister of Interior and Chairman of the Financial Police had to agree on the creation of a special interagency group. The increased tempo has also caused some consternation throughout the government and public statements from all quarters. Yerlan Karin, the Executive Secretary of the President's Nur Otan Party, complained about a plan to send KNB officers to KazAgro to oversee the use of \$1 billion in state aid. Minister of Health Zhaksylyk Doskaliyev responded to complaints about doctors accepting "gratuities" by proposing to legalize the practice and provide separate cashiers in hospitals to collect gratuities from patients.

ANTI-CORRUPTION CONFERENCE

¶18. (SBU) An international anti-corruption conference was held in Astana September 16-18, 2009. The conference was extremely important for the Financial Police to demonstrate its progress and lead role in the fight against corruption. The Financial Police noted that the Government of Kazakhstan's plans to ratify the "Civil Law Convention on Corruption," "Criminal Law Convention on Corruption," and the Council of Europe's "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism." Chairman of the Financial Police Kairat Kozhamzharov bragged about the 100% conviction rate of the many high-level government officials arrested. (NOTE: The event was political in nature with all participants confirming their commitments to good governance and fighting corruption and no agreement on effective measures against corruption. END NOTE.)

#### A CAUTIONARY TALE

¶19. (SBU) Transitioning from a post-Soviet culture of corruption to institutionalized equality under rule of law will be an uphill battle. Things did not work out well for Alpamys Bekturganov, one of the first whistle-blowers, who was in prison two months after accusing his boss, Akim (governor) of the Western Kazakhstan Oblast

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Baktykozha Izmukhambetov. Bekturganov, an advisor the Akim, referred to the anti-corruption decree when he publicly accused Izmukhambetov of nepotism and corruption crimes. Law-enforcement agencies, including the Committee for National Security (KNB), accepted evidence but did not file charges. Bekturganov was fired, taken to court by Izmukhambetov for slander, and sentenced to one year in prison. He was also sentenced to an additional three years for embezzlement of \$800 used to publish a book.

¶20. (SBU) COMMENT: Competing theories exist about the recent increase in anti-corruption activities. From one side, it appears that the Financial Police reacted to the President's criticism and are attempting to prove their value. However, many theorize that some in the government are using the Financial Police and KNB as a weapon in an internal political battle. At the same time, they note the efficacy of this weapon due to the alleged pervasiveness of corrupt practices (reftel). In truth, there might be "a little from column A, and a little from column B." Despite these problems, INL has established a good working relationship with both the Financial Police and its Academy and is providing technical assistance to increase its professionalism and improve its ability to fight money laundering and terrorism financing while respecting the rule of law.  
END COMMENT.

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